

ESTTA Tracking number: **ESTTA637277**

Filing date: **11/05/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056634
Party	Defendant Sagar Shah dba Nature's Guru
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Submission	Opposition/Response to Motion
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Signature	/Jason E. Garcia/
Date	11/05/2014
Attachments	Response to GURU Motion for Extension of Trial Dates_11-5-2014 (00077420).pdf(286171 bytes) DECLARATION OF JASON E GARCIA RE RESPONSE TO MOTION FOR EXTENSION OF TRIAL DATES (00077419-2).pdf(146463 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GURU BEVERAGE CO.)	Cancellation No.:	92056634
)		
Petitioner)	Mark:	NATURE’S GURU
v.)		
)	Registration No.:	4,125,408
SAGAR SHAH)	Reg. Date:	April 10, 2012
)		
)		
Registrant)		
_____)		

**REGISTRANT’S RESPONSE TO PETITIONER’S MOTION FOR
EXTENSION OF REMAINING TRIAL DATES**

Guru Beverage Company (“Petitioner”) moved for an extension of the remaining trial dates (“Petitioner’s Motion”) asserting it was necessary to “allow the parties to discuss settlement or to arrange for testimony deposition of Petitioner” (*See* Petitioner’s Motion, P. 1, Para. 2). Petitioner’s Motion fails to show good cause as required under Rule 509.01 of the Trademark Trial and Appeal Board Manual of Procedure (June 2014)(“TBMP”).

Petitioner provided no reason why they could not schedule and take the deposition testimony of the one witness Petitioner identified in the proceedings while discussing settlement. As it turns out, Petitioner responded to Registrant’s renewed invitation for settlement discussions (made weeks before Petitioner’s deadline) only AFTER Petitioner’s Motion was filed.

From the outset of these proceedings and despite months of suspension, Registrant has sought to engage Petitioner in settlement discussions. (*See* Declaration of Jason E. Garcia in support of Registrant’s Response to Petitioner’s Motion for Extension of Remaining Trail Dates

(“Garcia Decl.”) at Para. 2-9). Throughout this proceeding, Petitioner has ignored Registrant’s overtures and repeatedly failed to take action until a final deadline approaches and then either seeks to delay or takes the minimum action required. *Id.* This has resulted in a long-drawn out and thus more costly proceeding, which has placed an unfair and inappropriate burden on Registrant who is a small business, as Petitioner is aware.

Plaintiff’s Motion does not set forth facts sufficient to constitute good cause as required by TMBP 509.09(a).

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient. Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. The Board will “scrutinize carefully” any motion to extend time, to determine whether the requisite good cause has been shown. (TMBP 509.01(a) Motions to Extend Time.)

Petitioner has shown a pattern of not taking action until a final deadline and then taking an action simply to continue the proceeding. (*See, Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000) (mere existence of settlement negotiations or proposals, without more, would not justify delay in proceeding with testimony); *See also, Instruments SA Inc. V. ASI Instruments, Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) (plaintiff’s claim of ongoing bilateral settlement negotiations was rebutted by defendant, and no other reason for plaintiff’s failure to proceed with discovery was shown.)) Further, the current motion to extend deadlines was necessitated by Petitioner’s lack of due diligence and unreasonable delay in prosecuting this

proceeding. See, generally, Luemme, Inc. v. D.B. Plus Inc., 53 USPQ2d 1758, 1760-1761 (TTAB 1999) (plaintiff failed to set forth detailed facts concerning the circumstances -- plaintiff's allegedly busy travel schedule -- which necessitated the extension, and record showed that need for extension in fact resulted from plaintiff's delay and lack of diligence during previously-set discovery period.)) Petitioner had plenty of time from the recommencement of this proceeding to engage in settlement discussions and to complete their deposition testimony within the proscribed period. Thus there is no justifiable reason for Petitioner to have moved to extend the deadlines in this proceeding.

Given Petitioner's history of not prosecuting this proceeding in an active or timely fashion, and given that Petitioner could have exchanged proposed settlement terms well before the deadline for Petitioner's testimony period, Petitioner failed to demonstrate good cause in Petitioner's Motion. Registrant requests that the Board deny Petitioner's Motion and declare Petitioner's Testimony Period to have closed on November 3, 2014. (See, Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc., 61 USPQ2d 1542, 1543 44 (TTAB 2001) (petitioner failed to explain how activity of rearranging its laboratory facilities during relevant time period prevented taking testimony; no detailed information regarding petitioner's apparent difficulty in preparing and submitting its evidence or why petitioner waited until the last day of its testimony period to request the extension.))

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Respectfully Submitted,



Dated: November 5, 2014

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Attorneys for Registrant
Sagar Shah

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Registrant's Response to Petitioner's Motion for Extension of Remaining Trial Dates was sent by email, with a courtesy copy sent via U.S. First Class Mail to the following on this 5th day of November, 2014:

Mark B. Harrison
VENABLE LLP
575 7th Street, N.W.
Washington, D.C. 20004
Email: mbharrison@venable.com



Jason Garcia

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Petitioner)	Mark:	NATURE'S GURU
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**DECLARATION OF JASON E. GARCIA IN SUPPORT OF REGISTRANT'S
RESPONSE TO PETITIONER'S MOTION FOR EXTENSION
OF REMAINING TRIAL DATES**

The undersigned, Jason E. Garcia, declare and state as follows:

1. I am an attorney with the law firm of Novak Druce Connolly Bove + Quigg LLP, and counsel of record for Registrant, Sagar Shah dba Nature's Guru, and make this declaration in support of Respondent's Opposition to Petitioner's Motion for Extension of the Remaining Trial Dates. I am duly licensed to practice law before all courts in the State of California and before the TTAB. I have personal, firsthand knowledge of facts stated in this declaration and, if called as a witness, could and would competently testify thereto.

2. On March 19, 2013, during the pre-trial conference with Petitioner's Attorney, Mark Harrison, we first discussed possible settlement and together prepared an outline of proposed settlement terms. We agreed to electronic service for the proceedings, stipulated to suspend proceedings for 180 days to allow time for the parties to draft and finalize a settlement

agreement, and that Mr. Harrison would prepare a first draft of the settlement agreement based on the agreed upon outline of settlement terms.

3. Between March 19, 2013 and September 16, 2013, when proceedings were suspended to allow for settlement negotiations, I called and/or emailed Mr. Harrison on April 4, 2013, on April 24, 2013, on May 10, 2013, on May 22, 2013, on June 29, 2013, during the week of August 5, 2013, on August 14, 2013, on August 26, 2013, on August 30, 2013, to request a status update and that progress be made on the draft settlement agreement. On April 4, 2013, June 20, 2014, August 16, 2013 and on August 30, 2013, I spoke with or received an email from Mr. Harrison indicating that he was in the process of speaking with his client and would get back to us with the draft settlement agreement. No substantive response was received from Petitioner during this period.

4. On December 5, 2013, Mr. Harrison and I, along with Katherine Basile, had a teleconference regarding status of proceedings and negotiations. An agreement was made to serve initial disclosures by January 9, 2014, and a request was made that Petitioner give a substantive response regarding proposed settlement by December 13, 2013. Despite several follow up emails sent by Registrant's counsel, Petitioner never provided a response regarding settlement during this period. On January 9, 2014, Registrant served Petitioner via email with his initial disclosures. Registrant's counsel did not receive Petitioner's initial disclosures on January 9, 2014; and copies of Petitioner's initial disclosures were not received by counsel for Registrant until April 7, 2014.

5. Discovery closed on March 14, 2014 and on March 18, 2014 counsel for Registrant received discovery requests by mail from Petitioner. On April 4, 2014, I sent a letter to Mr. Harrison objecting to the discovery requests because they were served before Petitioner

served its initial disclosures (contrary to TBMP 401.02), and also informed Mr. Harrison on April 14, 2014 that they were not properly served prior to the deadline by email as agreed to by the parties during the pretrial conference. Mr. Harrison claimed in a letter dated April 7, 2014 that initial disclosures were mailed on January 9, 2014, and provided a copy by email. No further demand for a discover response was made.

6. On April 28, 2014, Petitioner served their pretrial disclosures and requested Registrant's consent to a 30 day extension of all remaining trial dates because Mr. Harrison was going on vacation in May; Registrant denied Petitioner's request to the extension. On May 8, 2014, Petitioner filed a Motion for Summary Judgment, and the TTAB suspended proceedings. On June 10, 2014, Registrant submitted his Opposition and Response to Petitioner's Motion for Summary Judgment. On August 22, 2014, the Board denied Petitioner's Motion for Summary Judgment and reset the proceedings, setting a November 3, 2014 end of Petitioner's testimony period.

7. On August 29, 2014, Registrant proposed that the parties speak directly regarding settlement and requested contact information. No substantive response to the proposal was made by Petitioner until October 6, 2014, when Mr. Harrison confirmed that Petitioner was willing to speak directly with Registrant and simultaneously requested an extension of the remaining trial dates pending settlement discussions. On October 6, 2014, counsel for Registrant indicated that they would review the request with Registrant and on October 11, 2014, counsel for Registrant emailed Mr. Harrison updating him that Registrant was traveling, but expected to hear back the following week.

8. On October 17, 2014, counsel for Registrant emailed Mr. Harrison notifying him that Registrant would consent to the extension of trial dates, if the parties set up a firm date to

discuss settlement; that given past events Registrant wanted some assurance that settlement discussions would take place.

9. On October 22, 2014, Petitioner filed the Motion for Extension of Remaining Trial dates by two months. After that, the parties spoke directly about settlement.

Executed on November 5, 2014 in Cupertino, California. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'J. Garcia', with a horizontal line extending to the right.

Jason E. Garcia